

The Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN COSTELLO,

Defendant.

NO. CR22-160-RSM

**PRELIMINARY ORDER
OF FORFEITURE**

THIS MATTER comes before the Court on the United States' Motion for a Preliminary Order of Forfeiture ("Motion") seeking to forfeit, to the United States, Defendant Justin Costello's interest in (i) a sum of money ("Money Judgment") in the amount of \$625,092.02, representing proceeds Defendant personally obtained from his commission of securities fraud, in violation of 15 U.S.C. § 78j(b), 78ff, and 17 CFR 240.10b-5, as charged in Count 20 of the Indictment; and (ii) the following property as substitute property ("Subject Property"):

- \$60,000.05 in United States currency;
- 63,311.95 Mexican pesos (converted to United States dollars);
- five PAMP 1 oz .999 gold bars;
- one Sunshine Mint 1 oz .999 gold bar;

- one Chopard "Mille Miglia" limited edition 14/250 18k yellow gold wristwatch with black dial and original black leather band, Model # 1254, Serial number 939050;
- one Chopard "Monaco Historique" stainless steel wristwatch with white dial and black leather band, Model # 8568, Serial # 1929287;
- one 14k yellow gold Cuban link chain with 14k yellow gold gun pendant set with genuine 2.4mm round rubies, emeralds, and diamonds (9 of each) in grip of gun; and
- one 18k yellow gold grenade charm set with 31 0.01 carat full-cut round diamonds.

The Court, having reviewed the United States' Motion, as well as the other papers and pleadings filed in this matter, hereby FINDS a Preliminary Order of Forfeiture is appropriate for the following reasons:

- The proceeds of securities fraud, in violation of 15 U.S.C. § 78j(b), 78ff, and 17 CFR 240.10b-5, are forfeitable pursuant to 18 U.S.C. § 981(a)(1)(C), by way of 28 U.S.C. § 2461(c);
- In the Plea Agreement Defendant entered into with the United States on January 18, 2023, Defendant agreed to forfeit his interest in the Money Judgment pursuant to 18 U.S.C. § 981(a)(1)(C), by way of 28 U.S.C. § 2461(c), as it reflects proceeds he personally obtained from his commission of securities fraud and to which he entered a guilty plea, Dkt. No. 20 ¶ 12;
- The Money Judgment is personal to Defendant Costello and, pursuant to Federal Rule of Criminal Procedure ("Fed. R. Crim. P.") 32.2(c)(1), no third-party ancillary process is required before forfeiting it;
- The Money Judgment is separate and distinct from the restitution ordered in this case. The United States has agreed, however, that any amount

Defendant pays toward restitution or a criminal fine as part of the sentence related to the securities fraud offense will be credited against the amount owed for the Money Judgment, Dkt. No. 20 ¶ 12;

- In the Plea Agreement, Defendant agreed to forfeit the Subject Property as substitute property in partial satisfaction of the Money Judgment, Dkt. No. 20 ¶ 12;
- In the Plea Agreement, Defendant further agreed that the statutory criteria set forth in 21 U.S.C. §§ 853(p)(1)(A)–(E) have been satisfied, Dkt. No. 20 ¶ 12. Accordingly, the government has met the statutory criteria.

NOW, THEREFORE, THE COURT ORDERS:

A. Money Judgment:

1. Pursuant to 18 U.S.C. § 981(a)(1)(C), by way of 28 U.S.C. § 2461(c), and his Plea Agreement, Defendant's interest in a Money Judgment in the amount of \$625,092.02 is fully and finally forfeited, in its entirety, to the United States;

2. Pursuant to Fed. R. Crim. P. 32.2(b)(4)(A)–(B), this Preliminary Order will become final as to Defendant at the time he is sentenced; it will be made part of the sentence; and it will be included in the judgment;

3. No right, title, or interest in the Money Judgment exists in any party other than the United States; and

4. Any amount Defendant pays toward restitution or a criminal fine as part of the sentence related to the securities fraud offense will be credited against the amount owed for the Money Judgment.

B. Subject Property:

1. Pursuant to Fed. R. Crim. P. 32.2(b)(1)(2), 21 U.S.C. § 853(p), and Defendant's Plea Agreement, Defendant's interest in the Subject Property is fully and finally forfeited, in its entirety, to the United States as substitute property;

2. Pursuant to Fed. R. Crim. P. 32.2(b)(4)(A)-(B), this Preliminary Order will be final as to Defendant at the time he is sentenced, it will be made part of the sentence, and it will be included in the judgment;

3. The United States Department of Justice, Federal Bureau of Investigation ("FBI"), and/or its authorized agents or representatives shall maintain the Subject Property in its custody and control until further order of this Court;

4. Pursuant to Fed. R. Crim. P. 32.2(b)(6) and 21 U.S.C. § 853(n), the United States shall publish notice of this Preliminary Order and its intent to dispose of the Subject Property as permitted by governing law. The notice shall be posted on an official government website – currently www.forfeiture.gov – for at least thirty (30) days. For any person known to have alleged an interest in the Subject Property, the United States shall, to the extent possible, provide direct written notice to that person. The notice shall state that any person, other than the Defendant, who has or claims a legal interest in the Subject Property must file a petition with the Court within sixty (60) days of the first day of publication of the notice (which is thirty (30) days from the last day of publication), or within thirty (30) days of receipt of direct written notice, whichever is earlier. The notice shall advise all interested persons that the petition:

- a. shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Subject Property;
- b. shall be signed by the petitioner under penalty of perjury; and,
- c. shall set forth the nature and extent of the petitioner's right, title, or interest in the Subject Property, as well as any facts supporting the petitioner's claim and the specific relief sought.

5. If no third-party petition is filed within the allowable time period, the United States shall have clear title to the Subject Property, and this Preliminary Order shall become the Final Order of Forfeiture as provided by Fed. R. Crim. P. 32.2(c)(2);

6. If a third-party petition is filed, upon a showing that discovery is necessary to resolve factual issues it presents, discovery may be conducted in accordance with the Federal Rules of Civil Procedure before any hearing on the petition is held. Following adjudication of any third-party petitions, the Court will enter a Final Order of Forfeiture, pursuant to Fed. R. Crim. P. 32.2(c)(2) and 21 U.S.C. § 853(n), reflecting that adjudication; and

7. The Court will retain jurisdiction for the purpose of enforcing this Preliminary Order, adjudicating any third-party petitions, entering a Final Order of Forfeiture, and amending the Preliminary Order or Final Order as necessary pursuant to Fed. R. Crim. P. 32.2(e).

IT IS SO ORDERED.

DATED this 14th day of April, 2023.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

Presented by:

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